HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 577 Discount Plan Organizations
SPONSOR(S): Pigman
TIED BILLS: **IDEN./SIM. BILLS:** SB 430

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee		Tuszynski	Poche
2) Insurance & Banking Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The regulatory oversight of insurance companies is generally reserved to the states. In Florida, the Office of Insurance Regulation (OIR), within the Department of Financial Services (DFS), is responsible for regulating all activities concerning insurers and other risk bearing entities under the Insurance Code.

Discount Medical Plan Organizations (DMPOs) and Discount Medical Plans, in exchange for fees, dues, charges, or other consideration, provide access for plan members to providers of medical services and the right to receive medical services from those providers at a discount. Discount Medical Plans are not considered insurance under chapter 627, F.S., health maintenance organizations under chapter 641, F.S., or prepaid limited health plans under part I of chapter 636, F.S.

The Legislature established a comprehensive regulatory scheme for DMPOs in 2004. Regulation involves licensure, forms and rate filings and approval, disclosure requirements, and penalties.

HB 577 renames a "Discount Medical Plan" and a "Discount Medical Plan Organization" to a "Discount Plan" and a "Discount Plan Organization." The bill also clarifies the definition of a "Discount Plan" to exclude any plan that does not charge a fee to members. To increase flexibility in marketing and reduce administrative barriers on DMPOs, the bill:

- Defines "first page", upon which certain disclosures must appear, to mean the first page of any marketing material that first includes information describing benefits;
- Removes certain OIR rate and form approval requirements;
- Allows DMPOs to delegate functions to marketers and binds DMPOs to the actions of those marketers within the scope of the delegation;
- Allows marketers to commingle certain information on forms, advertisements, marketing materials, or brochures; and
- Specifies that OIR's form approval authority only pertains to medical services.

To maintain consumer protections for potential members and members of Discount Plans, the bill:

- Makes changes to the disclosure requirements, requiring acknowledgement and acceptance of the disclosures and plan terms and conditions before enrollment;
- Requires any provider that provides discounted services, in exchange for fees, dues, charges, or other consideration, to obtain and maintain a license as a Discount Plan Organization; and
- Requires Discount Plans that participate in open enrollment through an employer or association to provide refunds for cancellation equal to the full amount of all periodic charges paid by a member.

The bill also makes extensive conforming changes to the chapter to reflect the proposed changes.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Office of Insurance Regulation

The regulatory oversight of insurance companies is generally reserved to the states. In Florida, the Office of Insurance Regulation (OIR), within the Department of Financial Services (DFS), is responsible for all activities relating to insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the Insurance Code (Code).[1]

All persons who transact insurance in the state must comply with the Code.[2] OIR has the power to collect, propose, publish, and disseminate any information relating to the subject matter of the Code,[3] and may investigate any matter relating to insurance.[4] The specific chapters that comprise the Code are:

Chapter 624, F.S. – Insurance Code: Administration and General Provisions
Chapter 625, F.S. – Accounting, Investments, and Deposits by Insurers
Chapter 626, F.S. – Insurance Field Representatives and Operations
Chapter 627, F.S. – Insurance Rates and Contracts
Chapter 628, F.S. – Stock and Mutual Insurers; Holding Companies
Chapter 629, F.S. – Reciprocal Insurers
Chapter 630, F.S. – Alien Insurers: Trusteed Assets; Domestication
Chapter 631, F.S. – Insurer Insolvency; Guaranty of Payment
Chapter 632, F.S. – Fraternal Benefit Societies
Chapter 634, F.S. – Warranty Associations
Chapter 635, F.S. – Mortgage Guaranty Insurance
Chapter 636, F.S. – Prepaid Limited Health Service Organizations and Discount Medical Plan Organizations
Chapter 641, F.S. – Health Care Service Programs
Chapter 648, F.S. – Bail Bond Agents
Chapter 651, F.S. – Continuing Care Contracts

Discount Medical Plans and Organizations

Discount Medical Plan Organizations (DMPOs)[5] offer Discount Medical Plans,[6] in exchange for fees, dues, charges, or other consideration, that provide access for plan members to providers of medical services and the right to receive medical services from those providers at a discount. For example, a member pays a DMPO a monthly fee of $25 to access a network of providers that have contracted with the DMPO to offer discounts on certain procedures; the member chooses one of these contracted providers and has a $500 procedure done for $425, which is the 15% discounted rate provided in the plan. Discount Medical Plans are not considered insurance under chapter 627, F.S., health maintenance organizations under chapter 641, F.S., or prepaid limited health plans under part I of chapter 636, F.S.[7]

[1] S. 20.121(3)(a)1., F.S. The OIR's commissioner is the agency head for purposes of final agency action, and its rulemaking body is the Financial Services Commission (the Governor and the Cabinet).
[2] S. 624.11, F.S. The Insurance Code consists of chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[3] S. 624.307(4), F.S.
[4] S. 624.307(3), F.S.
[5] S. 636.202(2), F.S.
[6] S. 636.202(1), F.S.
[7] Id.

Regulation of DMPOs

The Legislature established a comprehensive regulatory scheme for DMPOs in 2004, creating part II of ch. 636, titled "Discount Medical Plan Organizations."[8] Regulation of DMPOs involves licensure, form and rate filings and approval, procedures for examinations and investigations by OIR, prohibited activities, required disclosures to plan members, tracking of providers, annual report filing, minimum capital requirements, a process for suspension and revocation of licenses, and other penalties.[9]

To obtain a license, a prospective DMPO must file an application with OIR for approval and pay a $50 licensure fee.[10] The application must include corporate formation documents, a copy of the form of all contracts for the provision of services, financial statements, and other information OIR may reasonably require.[11] If approved, OIR must issue a license for 1 year, and each year thereafter the DMPO must renew their license and pay a $50 fee.[12] The statute exempts from DMPO licensure requirements a provider who provides discounts to his or her own patients, such as a dentist who discounts routine procedures for current active patients.[13]

A DMPO must file all charges to members with OIR, and member rates more than $30 per month or $360 per year must be approved by OIR.[14] A DMPO is also required to file and get approval by OIR for all forms, including advertisements, marketing materials, and brochures, before using them.[15] DMPOs must make the following disclosures on the first page, written in 12-point font, of any advertisement, marketing material, and brochure, to any prospective member:

- The plan is not insurance.
- The plan provides discounts at certain health care providers for medical services.
- The plan does not make payments directly to the providers of medical services.
- The plan member is obligated to pay for all health care services but will receive a discount from those providers who have contracted with the DMPO.
- The name and address of the licensed DMPO.

If a member cancels his or her membership in a plan within the first 30 days of the effective date of enrollment, the DMPO must reimburse all periodic charges upon return of the discount card to the DMPO and any portion of a one-time processing fee in excess of $30.[16] If a DMPO fails to comply with the provisions of part II of ch. 636, F.S., OIR may levy administrative penalties of $100 per penalty, not to exceed $75,000 in aggregate,[17] or $500 per day for the first 10 days and $1,000 for each day after the 10th day for failure to file the required annual report.[18] OIR may also suspend a DMPO's authority to enroll new members, or revoke a DMPO's license.[19]

[8] Ch. 2004-297, Laws of Fla.
[9] Part II of Ch. 636, F.S.
[10] Ss. 636.204(2) and (6), F.S.
[11] Ss. 636.204(2)(a),(b),(c),(f),(i), and (m), F.S.
[12] S. 636.204(3), F.S.
[13] S. 636.204(6), F.S.
[14] S. 636.216(1), F.S.
[15] Ss. 636.216(3) and 228(1), F.S.
[16] S. 636.208, F.S.
[17] S. 636.223, F.S.
[18] S. 636.218, F.S.
[19] Ss. 636.222, F.S.

Complaints against DMPOs

Between 2014 and 2016, there were 35 complaints filed against DMPOs.[20] The majority of these complaints concerned refunds after cancellation of a plan, confusion regarding the difference in insurance and a Discount Medical Plan, and provider network adequacy.[21]

Effect of the Bill

HB 577 renames a "Discount Medical Plan" and a "Discount Medical Plan Organization" to a "Discount Plan" and a "Discount Plan Organization" (DPO). Plans may use the old plan and organization monikers until June 30, 2018, allowing such plans and organizations enough time to make changes to plan and marketing materials. The bill also clarifies the definition of a "Discount Plan" to exclude from licensure requirements any plan that does not charge a fee to its members.

The bill requires providers that offer discounts to their own patients in exchange for fees, dues, charges or other consideration to obtain and maintain a Discount Plan license. This would mean that the dentist or doctor who provides discounted services to his or her patients for a periodic fee, and is currently exempt from DMPO licensure requirements, would be required to obtain and maintain a DPO license.

The bill makes changes to the disclosure requirements of DPOs. The bill:

- Defines "first page", upon which the disclosures must appear, to be the page of any advertisement, marketing material, or brochure that first includes information describing benefits.
- Deems the disclosure requirement met if the member is unable to enroll in the plan without being presented with the required disclosures and must acknowledge and accept the plan terms and conditions before enrollment. This requires members to affirmatively acknowledge and accept the required disclosures and plan terms and conditions before being enrolled in a Discount Plan.
- Allows additional disclosures beyond the statutory requirement and deletes the requirement that disclosures for contracts made by telephone must be made orally and then provided in the initial written materials provided to the prospective or new member. This requirement is no longer necessary if members must acknowledge and accept the disclosures and plan terms and conditions before enrollment.

These changes in disclosure requirements allow DPOs more flexibility in the design and presentation of advertising and marketing materials. The changes maintain consumer protections by requiring acknowledgment and acceptance of the disclosures before allowing enrollment. The bill provides further consumer protection by requiring Discount Plans that participate in an open enrollment period through an employer or association to provide refunds for cancellation of a membership equal to the full amount of all periodic charges paid by the member.

The bill makes changes to charge and form filing requirements of DPOs. The bill:

- Removes the requirement for DPOs to file all charges to members with OIR and that all charges greater than $30 per month or $360 per year be approved by OIR.
- Removes the requirement that DPOs have the burden of proof to show the charges are reasonable, as approval is no longer required.
- Requires that only membership applications and fulfillment materials that describe medical services must be filed and approved by OIR.

[20] Email from Elizabeth Boyd, Legislative Affairs Director, Office of Chief Financial Officer, FW: DMPO Complaints, (Feb. 13, 2017).
[21] Redacted Consumer Requests for Assistance from the Department of Financial Services (on file with Health Innovation Subcommittee staff).

- Exempts DPOs from filing any form previously approved by OIR that has not been materially changed. For purposes of determining a material change, the following changes are not considered material: a change in charge; a change in the name of the marketer or entity distributing the plan; deletion of a benefit; or addition of a benefit that is not a medical service.

These changes will streamline the form and rate filing process, removing administrative burdens on DPOs and OIR. Removing the burden on a DPO of proving charges are reasonable reduces administrative burdens on DPOs. Removing the requirement for the approval of charges over certain levels by OIR further reduces administrative burdens on DPOs and OIR and introduces a free-market approach to the determination of charges for Discount Plan products.

The bill changes how Discount Plans can be marketed. The bill explicitly allows a DPO to delegate functions to a marketer and states the DPO will be bound to the actions of marketers within the scope of that delegation, which do not comply with statute. The bill also allows a marketer or Discount Plan Organization selling a Discount Plan with medical services and other services to commingle those products on a single page of forms, advertisements, marketing materials, or brochures. The bill also specifies that OIR's approval of forms only pertains to medical services regulated by part II of chapter 636, F.S. These changes allow DPOs and Discount Plan marketers to offer multiple products within one form or on the same marketing materials, further reducing administrative burdens on DPOs.

The bill makes extensive conforming changes to the chapter to reflect the provisions of the bill.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Retitles chapter 636, F.S., from "Prepaid Limited Health Service Organizations and Discount Medical Plan Organizations" to "Prepaid Limited Health Service Organizations and Discount Plan Organizations."
Section 2: Retitles part II of chapter 636, F.S., from "Discount Medical Plan Organizations" to "Discount Plan Organizations."
Section 3: Amends s. 636.202, F.S., relating to definitions.
Section 4: Amends s. 636.204, F.S., relating to license required.
Section 5: Amends s. 636.208, F.S., relating to fees; charges; reimbursement.
Section 6: Amends s. 636.212, F.S., relating to disclosures.
Section 7: Amends s. 636.214, F.S., relating to provider agreements.
Section 8: Amends s. 636.216, F.S., relating to form filings.
Section 9: Amends s. 636.228, F.S., relating to marketing of discount medical plans.
Section 10: Amends s. 636.230, F.S., relating to bundling discount medical plans with other products.
Section 11: Amends s. 408.9091, F.S., relating to Cover Florida Health Care Access Program.
Section 12: Amends s. 408.910, F.S., relating to Florida Health Choices Program.
Section 13: Amends s. 627.64731, F.S., relating to leasing, renting, or granting access to participating provider.
Section 14: Amends s. 636.003, F.S., relating to definitions.
Section 15: Amends s. 636.205, F.S., relating to issuance of license; denial.
Section 16: Amends s. 636.206, F.S., relating to examinations and investigations.
Section 17: Amends s. 636.207, F.S., relating to applicability of part.
Section 18: Amends s. 636.210, F.S., relating to prohibited activities of a discount medical plan organization.
Section 19: Amends s. 636.218, F.S., relating to annual reports.
Section 20: Amends s. 636.220, F.S., relating to minimum capital requirements.
Section 21: Amends s. 636.222, F.S., relating to suspension or revocation of license; suspension of enrollment of new members; terms of suspension.
Section 22: Amends s. 636.223, F.S., relating to administrative penalty.

Section 23: Amends s. 636.224, F.S., relating to notice of change of name or address of discount medical plan organization.
Section 24: Amends s. 636.226, F.S., relating to provider name listing.
Section 25: Amends s. 636.232, F.S., relating to rules.
Section 26: Amends s. 636.234, F.S., relating to service of process on a discount medical plan organization.
Section 27: Amends s. 636.236, F.S., relating to surety bond or security deposit.
Section 28: Amends s. 636.238, F.S., relating to penalties for violation of this part.
Section 29: Amends s. 636.240, F.S., relating to injunctions.
Section 30: Amends s. 636.244, F.S., relating to unlicensed discount medical plan organizations.
Section 31: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DPOs should realize administrative efficiencies from the elimination of several filing requirements and other regulations.

Currently exempt healthcare providers who provide discounted services to current patients for a fee would incur new administrative costs associated with licensure, including the $50 licensure fee, the $50 annual renewal fee, and administrative costs associated with certain filings and regulations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES